

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Deployment of Wireline Services Offering
Advanced Telecommunications Capability)

CC Docket No. 98-147

Petition of Bell Atlantic Corporation
For Relief from Barriers to Deployment of
Advanced Telecommunications Services)

CC Docket No. 98-11

Southwestern Bell Telephone Company,
Pacific Bell, and Nevada Bell Petition for
Relief from Regulation Pursuant to Section
706 of the Telecommunications Act of 1996
and 47 U.S.C. § 160 for ADSL Infrastructure
and Service)

CC Docket No. 98-91

OPPOSITION OF
ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. ("Allegiance") respectfully submits this opposition to the petitions for reconsideration filed by SBC Communications, Inc. ("SBC")¹ and the Bell Atlantic Telephone Companies ("Bell Atlantic")² of the Commission's *Advanced Services Order*³ issued in this proceeding.

¹ Petition for Reconsideration of SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, filed September 8, 1998. See Public Notice, Report No. 2297, Mimeo No. 85656, released September 18, 1998.

² Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification, filed September 8, 1998. See Public Notice, Report No. 2297, Mimeo No. 85656, released September 18, 1998.

³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, CC Docket No. 98-147, FCC 98-188, released August 7, 1998 ("Advanced Service Order").

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Allegiance is a competitive local exchange carrier (CLEC) and interexchange carrier that is rapidly expanding its provision of various competitive telephone services, Internet access, operator services, and high speed data services to areas throughout the country. Allegiance affiliates have received or are in the process of receiving authority to provide local exchange and interexchange service in several jurisdictions nationwide. Allegiance affiliates are currently providing service in and near New York City and in areas within Texas, Illinois and Georgia. Further, Allegiance affiliates have also been authorized to provide service throughout the states of New Jersey (for resale), California, Maryland and Massachusetts. Allegiance affiliates have applications pending for certificates of authority to provide local exchange and interexchange telecommunications service in New Jersey (for facilities-based services), in the District of Columbia, Pennsylvania and Virginia. Allegiance affiliates will soon file applications to provide telecommunications services in Colorado, Michigan, and Washington and expect to follow shortly thereafter with similar applications in other states. Allegiance Telecom International, Inc. has received authority under Section 214 of the Communications Act of 1934, as amended, from the Commission to provide international facilities-based and resale services between the United States and other countries.⁴

**I. THE COMMISSION CORRECTLY DETERMINED THAT IT LACKS
FORBEARANCE AUTHORITY UNDER SECTION 706**

In their initial petitions requesting relief under Section 706 of the Telecommunications Act of 1996 ("1996 Act"),⁵ the Bell Operating Companies ("BOCs") requested that the

⁴ 47 U.S.C. Sec. 214.

⁵ Pub. L. 104-104, Title VII, Sec. 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. Sec. 157.

Commission, to promote provision of advanced services, permit the BOCs to provide such services free from the key market-opening requirements of Section 251(c) of the Communications Act of 1934, as amended.⁶ They contended that Section 706 constituted an independent grant of authority that enabled the Commission to forbear from application of Section 251(c) obligations to ILECs if this would promote the goals of Section 706.

In the *Advanced Services Order*, the Commission rejected the BOCs' request and their overly expansive interpretation of Section 706. Instead, the Commission determined that BOCs' provision of advanced telecommunications services were fully subject to the key interconnection, unbundling, and resale obligations of the Act.⁷ The Commission further determined that Section 706 does not constitute an independent grant of forbearance authority.⁸ The Commission interpreted the direction to the Commission in Section 706 to use forbearance to promote the provision of advanced services to be a direction to use the forbearance authority granted in other sections of the Act, not as constituting an independent grant of authority.⁹ The Commission determined that this was most consistent with the statutory language, the framework of the 1996 Act, its legislative history, and Congress' policy objectives.¹⁰ The Commission observed that since Section 10(d) of the Act limited the Commission's authority to forbear from application of the requirements of sections 251(c) and 271, it did not have authority to forbear to grant the relief requested by the BOCs in their petitions.

⁶ 47 U.S.C. Sec. 251(c).

⁷ *Advanced Services Order* at para. 32 .

⁸ *Advanced Services Order* at para. 69.

⁹ *Id.*

¹⁰ *Advanced Services Order* at para. 77.

In their petitions for reconsideration, SBC and Bell Atlantic argue that the Commission erred in interpreting Section 10 as limiting its authority under Section 706 because Section 10 states that the Commission may not forbear from Section 251 and 271 “under subsection (a)” of Section 10. Thus, they contend, Section 10 only limits the Commission’s authority to forbear under that section. It does not affect the Commission’s ability to forbear under Section 706, they argue.

The Commission should reject these arguments. The issue is not whether Section 10 limits any forbearance authority granted in other sections of the Act, but whether, in fact, Section 706 constitutes a separate grant of forbearance authority. As correctly determined by the Commission, Section 706 does not constitute a separate grant of authority. Indeed, Section 10 contains the only grant of forbearance authority to the Commission in the Act. Thus, Section 10 which restricts forbearance from application of Section 251 and 271, prohibits the expansive relief sought by SBC and Bell Atlantic.

Moreover, the Commission did not rely solely on Section 10 in determining that Section 706 was not an independent grant of forbearance authority. Rather, as stated, the Commission relied on the statutory language, the whole framework of the Act, its legislative history, and Congress’ fundamental purpose of opening local markets to competition. It is absurd to think that Congress, without directly saying so, would fundamentally undercut the entire framework and purpose of the Act by permitting the Commission pursuant to Section 706 to abandon wholesale the key market opening provisions of the Act.

SBC and Bell Atlantic do not raise any issues concerning the Commission’s authority under Section 706 that the Commission has not already fully considered. The Commission should reject again the arguments of SBC and Bell Atlantic on this issue.

II. THE LOOP CONDITIONING MANDATE DOES NOT VIOLATE *IOWA UTILITIES BOARD*

In the *Advanced Services Order*, the Commission recognized that new entrants would not be able to provide advanced services unless they are able to obtain unbundled loops that are capable of providing such services; *i.e.*, loops that are conditioned to provide such services by removal of bridge taps, load coils, and other equipment that have been attached to the loop over the years that can interfere with provision of advanced services.¹¹ The Commission required incumbent LECs to provide conditioned loops when requested and stated that a LEC may not deny a request on the ground that it does not itself offer advanced services over the loop.¹²

SBC and Bell Atlantic contend on reconsideration that this requirement violates *Iowa Utilities Board*¹³ because in that decision the 8th Circuit vacated the Commission's rule adopted in the *Local Competition Order*¹⁴ that required ILECs to provide on request a quality of unbundled network elements ("UNEs") superior to that the ILEC provides to itself.¹⁵ SBC and Bell Atlantic claim that the Commission in the *Local Competition Order* cited the provision of

¹¹ *Advanced Services Order* at para 52.

¹² *Advanced Services Order* at para. 53.

¹³ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998).

¹⁴ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 15499, 15805-15806, paras. 694-606 (1996) (*Local Competition Order*), *vacated in part, aff'd in part*, *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998).

¹⁵ Section 51.311(c) of the Commission's rules, 47 C.F.R. Section 51.311(c), provides in part that: "[t]o the extent technically feasible, the quality of any unbundled network element, as well as the quality of the access to such an unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall, upon request, be superior in quality to that which the incumbent LEC provides to itself."

conditioned loops as an example of the superior quality unbundled network elements that ILECs must provide on request.¹⁶ SBC and Bell Atlantic urge the Commission to vacate the *Advanced Services Order* or determine that ILECs must provide conditioned loops only to the extent they provide such conditioning to themselves.¹⁷

SBC's and Bell Atlantic's arguments do not warrant reconsideration of the requirement established in the *Advanced Services Order* that incumbents must provide conditioned loops on request. The Court in *Iowa Utilities Board* was concerned that the Commission had imposed on ILECs a sweeping and burdensome obligation to create "yet unbuilt superior" networks at the request of the ILEC's competitors.¹⁸ However, the requirement that ILECs provide conditioned loops hardly constitutes a requirement that they build new, currently unbuilt or even superior networks. Rather, it simply means that the ILEC must clean-up existing loops so that they are not encumbered with devices that have accumulated on the line over the years that interfere with provision of advanced services.

Allegiance emphasizes, as set forth in the attached affidavit of Charles E. Doyle, that ILECs routinely remove, or add, bridge taps, load coils, and other electronic equipment from, or to, the loop in provisioning of telecommunications services. This includes removal of all such devices from the loop to provide some types of private line service identical to the conditioning that is required to provide enhanced services. This "conditioning" of loops goes on constantly in

¹⁶ "We require, for example, that incumbent LECs provide local loops conditioned to enable the provision of digital services (where technically feasible) even if the incumbent does not itself provide such digital services." *Local Competition Order* at n. 680.

¹⁷ Bell Atlantic petition at 3.

¹⁸ 120 F.3d at 813.

the telephone network. Adequate service could not be provided without it. Thus, it is manifestly false that the type of conditioning that ILECs want to avoid providing to CLECs represents some sort of unusual, special, or new service. Instead, it is inherently a part of provision of telecommunications services over the loop, and has been since the first loop was installed by any ILEC.

For these reasons, the requirement that ILECs provide conditioned loops on request is not burdensome, nor would it impose uncompensated costs on ILECs, or subject ILECs to a wide ranging requirement that they build new networks or facilities, invent new technologies, or otherwise endure any unreasonable requests at the whim of their competitors. Conditioning to provide advanced services in most cases will simply restore the loop to its preexisting state before the ILEC added the various devices in question. Thus, this requirement does not rise to the level of the more far-reaching requirement that ILECs provide superior quality UNEs that the 8th Circuit found unlawful. Therefore, this requirement in the *Advanced Services Order* does not violate *Iowa Utilities Board*.

Moreover, contrary to SBC's and Bell Atlantic's supposition, the Commission in the *Advanced Services Order* did not state or determine that ILECs must offer conditioned loops even if this constituted a superior or higher quality UNE than what the ILEC used for its own provision of advanced services. Rather, the Commission stated that ILECs must provide conditioned loops regardless of whether the incumbent provides advanced services. This is entirely different. The Commission's statement correctly means only that ILECs must provide the UNE in question in this case - conditioned loops - regardless of whether the purchaser intends to use them for a service that is not provided by the ILEC. This merely restates the determination in the *Local Competition Order* that new entrants may use UNEs to provide any

telecommunications service.¹⁹ For this reason, the Commission did not previously, and should not now, give the *Advanced Services Order* the interpretation that Bell Atlantic and SBC find so troubling under *Iowa Utilities Board*.

In addition, even if the Commission accepts SBC's and Bell Atlantic's narrow view of their obligations under Section 251(c)(3) to the effect that they must provide conditioned loops only if they provide them to themselves, it is evident that they must provide conditioned loops to CLECs because they routinely condition loops in their own provision of service, and have always done so. As explained previously and demonstrated in the attached affidavit of Charles E. Doyle, loop conditioning, including removal of all interfering devices from the loop, is an ordinary part of providing service over the loop. Loops conditioned by removal of all interfering devices already exist in the network and are used in the provision of a multitude of services including ISDN services, SS7 link services and some special access services (although they are not necessarily always used for provision of voice services). In short, ILECs must provide such conditioning with loops provided as UNEs since it is "conditioning that the local exchange carriers provide to themselves."²⁰

In addition, it is clear that incumbents are, or soon will be, providing advanced services and that they will need to use conditioned loops to do so.²¹ While Allegiance believes that whether or not ILECs provide advanced services is irrelevant to their obligation under Section

¹⁹ *Local Competition Order* at para. 292.

²⁰ Bell Atlantic petition at 3.

²¹ ILECs are deploying xDSL and other advanced services throughout the United States. *Advanced Services Order*, para 10 (incumbent wireline carriers are today at the early stages of deploying advanced services).

251(c)(3) to provide conditioned loops on request, insofar as ILEC provision of advanced services was erroneously considered to be a prerequisite to that obligation, it is clear that ILECs would nonetheless be required to do so since they are, or soon will be, providing advanced services.

Finally, Allegiance emphasizes that new entrants' ability to provide competitive, and advanced, services, will require that they be able to obtain loops that are appropriately conditioned to provide the service that they intend to provide. While incumbents under the 8th Circuit decision may not be required to build new networks, Allegiance believes that it is consistent with the goals of the Act and Section 251(c)(3) that incumbents provide reasonable conditioning, especially since they already provide it to themselves. Absent a conditioning requirement, the Commission is not likely to achieve the overarching pro-competitive goals of the 1996 Act.

VIII. CONCLUSION

For the foregoing reasons, Allegiance respectfully requests that the Commission affirm on reconsideration that it lacks authority under Section 706 of the 1996 Act to forbear from application of Section 251(c) obligations to ILECs; and affirm its requirement that ILECs must

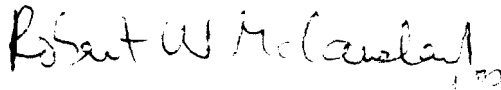
251(c)(3) to provide conditioned loops on request, insofar as ILEC provision of advanced services was erroneously considered to be a prerequisite to that obligation, it is clear that ILECs would nonetheless be required to do so since they are, or soon will be, providing advanced services.

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VIII. CONCLUSION

For the foregoing reasons, Allegiance respectfully requests that the Commission affirm on reconsideration that it lacks authority under Section 706 of the 1996 Act to forbear from application of Section 251(c) obligations to ILECs; and affirm its requirement that ILECs must provide conditioned loops on request. The Commission should deny the SBC and Bell Atlantic petitions for reconsideration.

Respectfully submitted,



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Dated: October 5, 1998

AFFADAVIT OF CHARLES E. DOYLE

**State of Texas,
County of Dallas, to wit:**

Before me this day personally appeared Charles E. Doyle who, being first duly sworn, deposes and states as follows:

1. My name is Charles E. Doyle. I am employed by Allegiance Telecom, Inc. ("Allegiance"), 1950 Stemmons Freeway, Suite 3026, Dallas, Texas 75207-3118 where I serve as Manager of CCS7 and Special Services. I am authorized to make this affidavit and have knowledge of the matters set forth herein by virtue of my own personal knowledge in the telecommunications industry over the last 21 years.

2. I have been employed at Allegiance since December 22, 1997. Prior to joining Allegiance, I held various technical and managerial positions for 10 years at MCI Telecommunications Corporation in Dallas, Texas. Before that, I held a number of technical positions at the equipment vendor Nortel, at the telecommunications carrier Allnet Telecommunications, Inc. and at the telecommunications carrier Satellite Business Systems.

3. In nearly all of my positions in the telecommunications industry, I have been required on numerous occasions to obtain and coordinate the installation of telecommunications services and facilities from Incumbent Local Exchange Carriers ("ILECs"), in most cases from one of the Bell Operating Companies. These services and facilities have included switched access, special access, and private line services as well as provision of interconnection, unbundled network elements, and services for resale pursuant to the Telecommunications Act of 1996. In doing so, I have gained extensive knowledge of the practices of those ILECs concerning the addition or removal of bridge taps, load coils, and other electronic equipment attached to or associated with local loops that are necessary for proper provisioning of telecommunications services and facilities. I have gained this knowledge because telephone company personnel routinely explain the need for modifications to the line in order to explain the time periods in which the requested service can be provided and/or because the equipment that I had to deploy would not function properly without such loop conditioning.

4. Accordingly, it is my personal experience that it is a standard and routinely occurring practice of ILECs to "condition" loops for the provision of services offered by these carriers by adding or removing bridge taps, load coils, or other electronic equipment on the loop and that the loop is, in many instances, identical to that which is used by the ILEC to provide local and long distance telecommunications services. Incumbent LECs have routinely removed all such devices from loops for the provision of some services, such as for some private line services. I know from my personal experience that ILECs have been conditioning loops in this way by removal of such devices for at least 15 years. This conditioning is identical to conditioning that is required in provisioning of some advanced services such as xDSL services.

Further the affiant sayeth not.

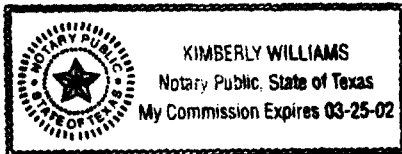
Charles E. Doyle

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Taken, sworn to, and subscribed before me this 2nd day of October, 1998.

My commission expires 03-25-02

Kimberly Williams
Notary Public



CERTIFICATE OF SERVICE

I, Jolanda Tedford, hereby certify that on this 5th day of October 1998, copies of the foregoing Opposition of Allegiance Telecom, Inc. was hand delivered to the parties listed below.

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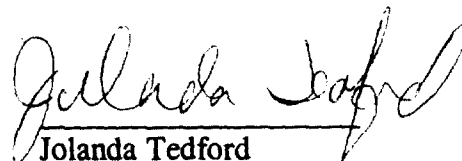
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